



STATE OF UTAH

CONTRACT AMENDMENT

AMENDMENT # 2 To CONTRACT # AR1468

TO BE ATTACHED TO AND MADE A PART OF the above numbered contract by and between the State of Utah, WSCA Administrator referred to as STATE and, Darcomm Supply Inc. dba Darcomm Network Solutions referred to as CONTRACTOR.

THE PARTIES AGREE TO AMEND THE CONTRACT AS FOLLOWS:

1. **Contract period:**

May 22, 2002 (original starting date)

May 31, 2004 (current ending date)

May 31, 2006 **new ending date**

2. **Contract amount:**

_____ (current contract amount)

_____ (amendment amount)

- 0 - **new contract amount**
(add current amount to amendment amount)

3. **Other changes:** (attach other sheets if necessary):

None

4. **Effective Date of Amendment:** As soon as both parties sign.

All other conditions and terms in the original contract and previous amendments remain the same.

IN WITNESS WHEREOF, the parties sign and cause the amendment to be executed.

CONTRACTOR

R. Stenzel 2/23/04
Contractor's signature Date

Type or Print Name and Title

Ron Stenzel, VP & G.M.

(DP-4 Revision 1/5/2000)

STATE

D. G. Richins MAR 03 2004
Douglas G. Richins Date
Director, Division of Purchasing

STATE OF UTAH
STATEWIDE CONTRACT AR-1468

1. **CONTRACTING PARTIES:** This Statewide Contract is between the **Division of Purchasing and General Services**, an agency of the State of Utah, and the following CONTRACTOR:

Darcomm Supply Inc, dba Darcomm Network Solutions

Name

3710 East University Drive, Suite #1

Address

Phoenix AZ 85034

City State Zip

Federal Tax ID# 86-0667767 Vendor # _____ Commodity Codes: 20464, 20621, 20623

Vendor Contact Person: Ron Stenzel Vendor Phone #: 602-414-1414 Ext 229

Vendor Fax #: 602-414-1411 Vendor email address: rstenzel@darcomm.com

2. **GENERAL PURPOSE OF CONTRACT:** The general purpose of this Contract is to provide:
Data Communications Equipment and Associated OEM Maintenance & Training.
3. **CONTRACT PERIOD:** Effective date May 22, 2002 Termination date May 31, 2004 unless terminated early or extended in accordance with the terms and conditions of this contract.
Renewal option: Renewable for one or two year terms up to four additional years.
4. **PRICING AS PER ATTACHMENT A (Addendum 1)**
PAYMENT TERMS: Net 30
DAYS REQUIRED FOR DELIVERY: 1 Day
MINIMUM ORDER: \$200.00
FREIGHT TERMS: F.O.B. Destination, Freight Prepaid
5. **ATTACHMENT A:** Addendum 1
ATTACHMENT B: WSCA Standard Terms and Conditions
Any conflicts between Attachment A and other Attachments will be resolved in favor of Attachment A.
6. **DOCUMENTS INCORPORATED INTO THIS CONTRACT BY REFERENCE BUT NOT ATTACHED:**
a. All other governmental laws, and regulations applicable to the goods and/or services authorized by this contract.
b. Utah State Procurement Code, Procurement Rules, RFP LW1907, and CONTRACTOR'S proposal response to RFP LW1907 dated 07-17-01.

IN WITNESS WHEREOF, the parties sign and cause this contract to be executed.

CONTRACTOR

STATE OF UTAH

Signature on file

Contractor's signature

Signature on file

Douglas G. Richins
Director, Division of Purchasing

Type or Print Name and Title

Date

Date

ATTACHMENT A ADDENDUM 1

This Addendum serves to clarify terms and conditions of the contract between the State of Utah, referred to as STATE, and Darcomm Supply Inc, dba Darcomm Network Solutions, referred to as Contractor. The State of Utah is acting as the Lead State for the procurement process resulting in **WSCA Contracts for Data Communications Equipment, associated OEM Maintenance and Training.**

A. Manufacturer Product Line(s)

This contract authorizes the Contractor to provide the following manufacturer's Data Communications Equipment, Maintenance, and Training, as listed by category. No other equipment or maintenance will be covered under this contract, unless identified in an amendment to the contract. Products covered under this agreement are:

Routers: Cisco
Switches: n/a
LAN/WAN Wireless: Cisco
CSU/DSU: n/a

B. State of Utah/WSCA Contract Manager

Lois Wiesemann
State of Utah
Division of Purchasing and General Services
State Office Building, Capitol Hill
Room 3150
Salt Lake City, UT 84114-1061

email: loisw@utah.gov
Voice: (801) 538-3144
Fax: (801) 538-3882

C. Remittance Address

Darcomm Supply, Inc.
3710 East University Drive, Suite #1
Phoenix, AZ 85034

D. Special Terms and Conditions

The parties agree to amend the terms and conditions as follows:

1. Order of Precedence
The order of precedence for the contract terms will be as follows:
 1. Addendum 1
 2. WSCA Terms and Conditions
 3. Contractor's Proposal Response to RFP LW1907
 4. RFP LW1907

2. Included Documents

The documents listed in Number 1 are included in the contract. It is agreed that any reference to the "Entire Agreement" includes these documents.

3. Public Information

The contract, including the price lists and the Response to the RFP, will be considered public documents and will be subject to government records policies in each state. The Contractor gives the STATE express permission to make copies of the information specified to provide to other STATE government entities that may use the contract, and to the public, in accordance with general STATE policies, including copies of said information that may be identified as confidential, proprietary, or copyrighted.

4. Arbitration

The STATE will not accept mandatory, binding arbitration. If there are any references to binding arbitration in the Contractor's Response to the RFP, they will be null and void. The parties may agree, on a case by case basis, to voluntary arbitration to resolve contract issues.

5. Contract Period

The contract period, including renewal options, is listed on the STATE OF UTAH - Statewide Contract cover page. Renewals will be agreed to upon written authorization from both parties. All references to automatic renewals will be null and void.

6. Governing Law

This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the State of Utah. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

7. Revisions to the WSCA Standard Terms and Conditions

The WSCA Standard Terms and Conditions will be revised as follows:

A. There are no changes to the WSCA Terms and Conditions.

Any additional changes listed by the Contractor in the Response to the RFP will be null and void.

8. Revisions to Contractor's Response to the RFP

Note: The changes below may be listed in multiple locations throughout the response. The changes will apply to all instances of similar terms.

The Contractor's Response to the RFP will be revised as follows:

A. There are no additional changes, except the changes identified in this Addendum, to the Contractor's Response to the RFP.

9. State of Utah Only Requirement

Attachment C from the RFP will apply to the State of Utah only. This term is as follows:

E-PROCUREMENT: The State of Utah has awarded an e-procurement system contract that has a transaction fee of 1% per order with a ceiling of \$500 for any one order of products/services. There are expected cost savings to the Contractors with implementation of the system. The successful vendor must agree to terms as described in the following subparagraphs:

a. The Contractor must agree to integrate its catalog of products/services into the e-procurement system. Once implemented, the Contractor must pay the transaction fees for orders placed against the contract. In the event, the Contractor fails to make payments, the State may: (i) eliminate the Contractor from the system in accordance with an escalation and review process developed by the State and its e-procurement vendor and (ii) terminate the State contract and award the contract to the next acceptable bidder.

b. At the time that the Contractor will be required to offer products/services through the e-procurement system, the State will negotiate an equitable adjustment in unit prices to account for the expected supplier fees on orders placed on the system. The State will negotiate a single pricing structure for contract purchases and (i) prohibit discounting off-system purchases or otherwise offering discriminatory pricing or preferences for orders placed off-system; and (ii) require the Contractor to manually track and report the ordering volume of off-system purchases of supplies/services.

E. Contractor Requirements

1. Contractor Responsibility

Contractor is solely responsible for fulfillment of the responsibilities under the terms and conditions of the contract. The procuring agencies will issue purchase orders and make payments to only the named contractors.

2. Serving Subcontractors

If using servicing subcontractors for the performance of local marketing, maintenance and/or technical support services in accordance with the terms and conditions of the contract. Servicing subcontractors may not directly accept purchase orders or payments for products or services from procuring agencies under the terms and conditions of the contract. The authorized procuring agency has the option of choosing whether to purchase the associated OEM maintenance and/or training to support the equipment purchased.

3. WSCA Administration Fee

The contractor must pay a WSCA administration fee of one tenth of one percent (.10%) in accordance with the terms and conditions of the contract. The WSCA administration fee is not negotiable.

4. Usage Reporting Requirement

Contractor must submit quarterly usage reports to the contract manager. Initiation and submission of the quarterly report is the responsibility of the contractor without prompting or notification by the contract manager. The due dates of each quarterly contract usage report are April 30, July 31, October 31, and January 31. Quarterly usage reports must contain total dollar usage figures for each WSCA member-state (and non-member state), per product category, per manufacturer, respectively. Usage figures must be provided per maintenance option.

5. Change in Contractor Representatives
The State of Utah/WSCA reserves the right to require a change(s) in contractor representatives if the assigned representative(s) is not, in the opinion of the State of Utah's contract manager, meeting its needs adequately.
6. Website Development and Maintenance
Contractor must maintain said website and keep the information current and correct on a timely basis.
7. Rollout and Marketing
Contractor may conduct a marketing effort as described in Contractor's proposal.
8. Right to Publish
Contractor must secure prior approval from the contract manager for permission to release any information that pertains to the potential work or activities relating to this contract. Failure to adhere to this requirement may result in termination of the contract for cause.
9. Contractor's Scope of Equipment and Services
Contractor may only fill contract orders from the scope of equipment and services under contract. Any sale made under this contract by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described in Section E may result in contract termination for cause.
10. E-Rate Requirement
Contractor must participate in the Federal Communication Commission's E-rate discount program established under authority of the Federal Telecommunications Commission Act of 1996. Participation in, and implementation of, this program must be provided without the addition of any service or administration fee by the contractor.
11. Freight Terms of Sale F.O.B. Destination, Freight Prepaid
Contractor will ship all products F.O.B. destination, freight included in the product price. Contractor may not include freight charges on invoicing. Failure to comply with this requirement may result in contract termination for cause.

Whenever a procuring agency does not accept any product and returns it to the contractor, all related documentation furnished by the contractor shall be returned also. The contractor shall bear all risk of loss or damage with respect to returned products except for loss or damage directly attributable to the negligence of the procuring agency. Contractor is responsible for the pick-up of returned equipment.

12. Price Guarantee Period
Percentage discount depth from list is not subject to a "price increase request" that would result in a less attractive discount; discounts may only be adjusted by the contractor to reflect a deeper discount(s). The discount is applied to manufacturers current published list price schedule(s).

Maintenance and any training related costs are guaranteed for two years.

13. Product Revision Requests

Contractor must submit updated price list(s) upon publication, or any other product model changes, addition of new products, product upgrades or services in a timely manner.

Contractor agrees to delete obsolete and discontinued products from the contract price list(s) on a timely basis. Major product model changes will be incorporated into the contract as soon as possible after product introduction, to be offered at the same rate of discount for the appropriate price list and its discount.

14. Maintenance of Current Price List with Discount(s) Applied

Manufacturer's price list(s) must be tailored for WSCA with the WSCA contract discount(s) applied; this must be created and maintained by the contractor on an Internet website hosted by the contractor, at no additional charge(s) to the State of Utah or WSCA. This website will be listed as a link from the WSCA website.

F. Contract Scope of Equipment and Related Services

Any sale by the Contractor of equipment, products or services not explicitly covered by the scope of equipment, products and related services described below may result in contract termination for cause.

1. **Discounts of Manufacturers Price List**

<i>Cisco Systems</i>	<i>Hardware - 35% off List Price includes 28 month warranty Maintenance/ documentation – 5 % off List Price</i>
<i>Darcomm Services</i>	<i>typical 25 % off List – see attached List</i>
<i>Network Cables</i>	<i>typical 35 % off List - see attached List</i>

Additional Discount of 1% on orders of \$ 1,000,000. per purchase order

Additional Discount of 2% on orders of \$ 2,000,000. per purchase order

Additional Discount of 3% on orders of \$ 3,000,000. per purchase order

Additional Discount of 4% on orders of \$ 5,000,000. per purchase order

FoB – Delivery Point – standard ups shipping is pre-paid and included in product cost

For expedites , orders to large or to heavy for UPS, actual shipping costs will be added

To Invoice Or WSCA member may use their shipper contract # for shipping

2. **WSCA Member-State coverage**

a. Darcomm currently has four maintenance locations staffed by Manufacturer certified individuals. These locations are:

Phoenix – Staffed by 7 Systems Engineers

Tucson – Staffed by 2 Systems Engineers

Flagstaff – Staffed by 1 Systems Engineer

Albuquerque – Staffed by 1 Systems Engineer

b. Support staff for all regions of WSCA members will be;

Sonia Gregory – Admin Manager

Misty Smith – Admin Assistant, Customer Service, Trouble Tickets

Mike Daniel – Division Manager – Government and Education Services, Government and Education Specialist, Contract Support, Contract Signator, Contract negotiations

Loretta Mares – Division Manager – New Mexico

Tom Baldwin – Manager – Technical Services

Hope Salas – Manager – Project Management / Project Co-ordination

Tim Hingle – Government and Education Specialist, RCCD– New Mexico /Colorado

c. For orders, pre-sales support contacts will be Mike Daniel, Lorretta Mares and Tim Hingle.

d. Order issues/ follow up will be Sonia Gregory, Misty Smith.

e. Purchase orders will be faxed to 602-414-1411, email purchase orders will be sent to wsca.orders@darcomm.com

f. For the following states: **AK, HI, CA, OR, WA, NV, UT, AZ** = Phoenix Office

Pre Sales and Support : 1-888-router-1

Customer Service: 602-414-1414

Fax: 602-414-1411

Mike Daniel: 602-414-1414 ext 243

g. For the following states: **MT, ID, WY, SD, MN, CO, NM** = Albuquerque office

Pre Sales and Support: 505-883-1908

Customer Service: 602-414-1414

Fax: 505-883-1918

Lorretta Mares: 505-883-1908 Time Hingle: 505-486-5167

3. **Escalation Procedures**

a. Darcomm Problem Prioritization and Escalation Guideline

Problem Priorities Definitions:

Priority 1: Production network is down causing critical impact to business operations if service is not restored quickly. No work around is available. Darcomm and customer are willing to commit substantial resources around the clock to resolve the situation.

Priority 2: Production network is severely degraded impacting significant aspects of business operations. No workaround is available. Darcomm and customer are willing to commit full-time resources during business hours to resolve situation.

Priority 3: Network performance is degraded. Network functionality is noticeably impaired but most business operations continue.

Priority 4: Customer requires information or assistance on Cisco product capabilities, installation, or configuration.

NOTE: Priority 1 problem escalation times are measured in calendar hours 24 hours per day, 7 days per week. Priority 2, 3, and 4 escalation times correspond with Darcomm business hours, 8 a.m. to 6 p.m. Mountain Time, Monday through Friday, excluding Darcomm holidays.

CUSTOMER ESCALATION GUIDELINE

Elapsed Time	Priority 1	Priority 2	Priority 3	Priority 4
1-Hour	Tech Service Manager			
4-Hour	Cisco TAC	Tech Service Manager		
24-Hour	Vice President	Cisco TAC	Tech Service Manager	
48-Hour	President	Vice President	Cisco TAC	
72-Hour		President	Vice President	Tech Service Manager
96-Hour			President	Vice President

Requesting Escalation:

If you feel that adequate forward progress or the quality of service is not satisfactory, we encourage you to escalate by asking for the General Manager at

1-888-ROUTER1
(602) 414-1414

4. Technical Services (Equipment Warranty, Installation, Training, Maintenance Options, Replacement Parts)

a. Training

Darcomm will provide support under multiple mechanisms, Darcomm personnel, Darcomm's Network Operations Center (NOC), IIS personnel, manufacturer service/support and manufacturer field support engineers available nation wide. With multi-state roll-outs we generally receive, configure and test the equipment prior to shipment, then turnkey equipment arrives at the customer site. Any non-technical personnel can be used to install, and if questions or complications arise, we provide phone support. In some cases WSCA members may want to use the video conferencing for either project co-ordination, installation assistance or training.

Training can be customized to the customer's needs, whether it be at one of our facilities, by video conference or at the customer premise for 2 to 20 people. The video conference equipment we have is industry standards based and through video bridging services, up to 4 sites can be involved without the need to travel.

For larger accounts purchasing installation Darcomm will provide basic training as needed at no charge. No certification is required. Customer may elect to have qualified individuals trained in

depth. If so, Darcomm staff can provide training. Training can take place at the customer site. Cost is \$1,200 per day for up to 6 persons, materials included. Add to this cost airfare to the destination and \$150 per diem per day. Training is customized for customer depending on the equipment, circuit types and customer needs.

Following page illustrates the coverage area.

Onsite or Local Coverage: **CA, NV, UT, CO, NM, AZ**

Use of Cisco or Other Contracted Employees: **CA, NV, OR, WA, ID, MT, WY, SD, MN, AK, HI**

Training Facility: **AZ, NM**

Video Conferencing: **CA, NV, OR, WA, ID, MT, WY, CO, SD, MN, AK, HI**

b. Warranty

1. The contractor guarantees that all equipment delivered pursuant to these specifications will be new and un-used, will conform to said specifications, and will be free from mechanical, electrical or other defects for a minimum of two (2) years from the date of installation, but no more than twenty eight (28) months from the date of shipment.
2. If because of workmanship or design defects the equipment supplied requires modifications, repair or replacement, the contractor will promptly perform the necessary work to insure the equipment is in satisfactory operating condition at no cost to the buyer.
3. Both contractor and customer agree that the customer has the right to perform any routine maintenance and/or repairs required within the warranty period without jeopardizing the contractor's warranty or guarantee.
4. The contractor agrees to replace or repair any defective parts during the warranty period. The customer may agree to replace these parts or choose to have repairs and modifications done by the contractor or their local service representatives.
5. (Following Applies to LAN/WAN Wireless) Darcomm will provide site surveys and installation through its field engineers or utilize Cisco's VAR network. (Following Applies to Routers) As Silver Partners with Cisco Systems, Darcomm is required to provide specific levels of customer support, service and accounting with regard to their satisfaction of Darcomm projects and installations. Darcomm is required to keep accurate details of their trouble ticket responses and closure to those tickets. Darcomm will provide phone support and problem resolution through the toll free number if the other service options are not chosen. Factory telephone support and problem resolution will also be available during the first 15 months. Contact Darcomm by toll free number and ask for Misty Smith or the factory by phone for in warranty support and no-charge parts exchange. Contact Darcomm by toll free number and ask for Misty Smith or the factory by phone for out of warranty support. Darcomm will use Cisco's VAR network for service in some states. Darcomm will

provide site surveys and installation through its field engineers or utilize Cisco's VAR network.

c. Replacement Parts

1. The contractor will guarantee that standard replacement parts will be available for a minimum of seven (7) years from the date of shipment of the original equipment. Contractor will repair or replace parts within a reasonable time period from receipt of an order.
2. Darcomm will provide phone support and problem resolution through the toll free number if the other service options are not chosen. Factory telephone support and problem resolution will also be available during the first 15 months. Contact Darcomm by toll free number and ask for Misty Smith or the factory by phone for in warranty support and no-charge parts exchange. Contact Darcomm by toll free number and ask for Misty Smith or the factory by phone for out of warranty support. In warranty replacement period is 24 hours. Out of warranty replacement cost is 30% of original list price. Out of warranty replacement replacement period is 72 hours. (Following Applies to LAN/WAN Wireless) Onsite re-installation is \$575 for 11 megabit units, \$875 for higher speed units via the factory or Darcomm. Within 50 miles of major metropolitan service center, additional costs at \$2.50 per mile outside these areas.
3. The contractor agrees to provide the Buyer with a published per unit discount price for the duration of the contract period on all repair parts or accessory items ordered direct from the manufacturer's factory.

d. Maintenance Options

1. Darcomm will provide coverage in all states either through Darcomm phone support, Darcomm onsite or through VAR network. Typically products under warranty will be covered by phone support 24x7 at no charge or 8 am to 5 pm through Darcomm (Following Applies to LAN/WAN Wireless) Out of warranty costs per incident per site. Internal access points and bridges - \$350. External bridges - \$575 plus materials, within 50 miles of major metropolitan service center, additional costs at \$2.50 per mile outside these areas. (Following Applies to Routers) Pit pf warranty costs per incident per site. Small and modular routers - \$550. Core Routers - \$775 plus \$100 per additional populated slot over 2, within 50 miles of major metropolitan service center, additional costs at \$2.50 per mile outside these areas.
2. Include 1 year (Software Maintenance) for each unit quoted above. No Charge.
3. Include 1 year (5x8) Maintenance charges, individually, for each unit quoted above. 7% of List Price. A problem resolution and procedure sheet can be provided as needed to individual customers. No training needed.

4. Include 1 year (7x24x4) Maintenance charges, individually for each unit quoted above. 10% of List Price. A problem resolution and procedure sheet can be provided as needed to individual customers. No training needed.
- e. Coterminous Maintenance
1. It is desirable that all maintenance solutions be coterminous with the use of the equipment. That is to say, if a purchasing entity replaces or discontinues the use of a piece of equipment covered under a maintenance agreement, the agreement can also be terminated and a credit is due to the purchasing agency.
- Individual agencies may choose to work with the vendor(s) in order to secure maintenance agreements including contract dates coterminous with the calendar or States fiscal, and/or prorated maintenance pricing based on a calendar or fiscal year, and/or options to renew maintenance. However, it is not the intent of this RFP to define all of the possible scenarios available for these agreements. Details, other than those specified within this agreement, are to be worked out with the local vendors.
- f. Maintenance by Customer Personnel
1. Out Toll Free number is provided for trouble shooting assistance. Training can be done at time of installation at no charge, typically this takes less than ½ hour due to non-user serviceable parts. A problem resolution and procedure sheet can be provided as needed to individual customers. For larger accounts, purchasing installation Darcomm will provide basic training as needed at no charge. No certification is required. Customer may elect to have qualified individuals trained in depth. If so, Darcomm staff can provide training. Training can take place at the customer site. Cost is \$1,200 per day for up to 6 persons, materials included. Add to this cost airfare to the destination and \$150 per diem per day. Training is customized for customer depending on the equipment purchased, environmental conditions and customer needs.
- g. Maintenance of Proposed Equipment
1. Darcomm has been an authorized dealer for 9 years with certified/qualified staff in house. Darcomm will use Cisco's VAR network for service in some states. (Following Applies to LAN/WAN Wireless) Darcomm has over 100 installed units and can provide support and diagnostics by phone or on-site. (Following Applies to Routers) Darcomm has over 5000 installed units and can provide support and diagnostics by phone or on-site.
- g. Spare Parts Availability
1. Darcomm will house spare parts as needed. Darcomm consistently has products in their warehouse for immediate shipment. The customer will need to decide on service contracts if these systems are mission critical. One additional unit for each 15 purchased is a good rule of thumb.

ATTACHMENT B
Standard Contract Terms and Conditions
Western States Contracting Alliance (WSCA)

1. PARTICIPANTS: Western States Contracting Alliance (“WSCA”) is a cooperative group contracting consortium for state government departments, institutions and political subdivisions (i.e., colleges, school districts, counties, cities, etc.) for the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington, and Wyoming. Obligations under this contract are limited to those Participating States who have signed (and not revoked) an Intent to Contract at the time of award, or who have executed a Participating Addendum where contemplated by the solicitation. Financial obligations of Participating States are limited to the orders placed by the departments or other state agencies and institutions having available funds. Participating States incur no financial obligations on behalf of political subdivisions. Unless otherwise specified in the solicitation, the resulting price agreement(s) will be permissive.

2. DEFINITIONS:

“Lead State” means the State conducting this cooperative solicitation and centrally administering any resulting price agreement.

“Offer” or “Bid” or “Proposal” refers to the offer submitted in response to a solicitation, whether denominated as an invitation for bid, request for proposal, or otherwise. “Bidder” or “Offeror” similarly refers to the person, company, or other entity submitting the bid or proposal that constitutes an offer capable of acceptance, regardless of the solicitation method used.

“Permissive price agreement” means that placement of orders through the price agreement is discretionary with Purchasing Entities. They may satisfy their requirements through the price agreement without using statutory or regulatory procedures (e.g. invitations for bids) to solicit competitive bids or proposals. Purchasing Entities may, however, satisfy requirements without using the price agreement so long as applicable procurement statutes and rules are followed.

“Participating Addendum” means a bilateral agreement executed by the contractor and a Participating State that clarifies the operation of the price agreement for the State concerned, e.g. ordering procedures specific to a State, and may add other state-specific language or other requirements.

“Participating State” means a member of WSCA who has indicated its intent to participate as disclosed on the solicitation, or who subsequently signs a Participating Addendum where contemplated by the solicitation.

“Purchasing Entity” means a Participating State or another legal entity, such as a political subdivision, properly authorized by a Participating State to enter into a contract for the purchase of goods described in this solicitation. Unless otherwise limited in this solicitation or in a Participating Addendum, political subdivisions of Participating States are Purchasing Entities and Participants authorized to purchase the goods and/or services described in this solicitation.

3. QUANTITY ESTIMATES: Estimated quantities are informational and not to be construed as a warranty of accuracy of historical or anticipated volumes or a guarantee to purchase any amount.

4. SPECIFICATIONS: Any deviation from specifications must be clearly indicated by offeror, otherwise, it will be considered that the proposal is in strict compliance. When BRAND NAMES or manufacturers' numbers are stated in the specifications they are intended to establish a standard only and are not restrictive unless the solicitation says "no substitute." Offers will be considered on other makes, models or brands having comparable quality, style, workmanship and performance characteristics. Alternate proposals offering lower quality or inferior performance will not be considered.

5. ACCEPTANCE OR REJECTION OF BIDS AND PROPOSALS: The Lead State reserves the right to accept or reject any or all bids or proposals, or parts of bids or proposals, and to waive informalities therein.

6. SAMPLES: Generally, when required, samples will be specifically requested in the solicitation. Samples, when required, are to be furnished free of charge. Except for those samples destroyed or mutilated during testing, samples will be returned at an offeror's request, transportation collect.

7. CASH DISCOUNT TERMS: Offeror may quote a cash discount based upon early payment; however discounts offered for less than 30 days will not be considered in making the award. The date from which discount time is calculated shall be the date a correct invoice is received or receipt of shipment, whichever is later; except that if testing is performed, the date shall be the date of acceptance of the merchandise.

8. TAXES: Offered prices shall be exclusive of state sales and federal excise taxes. Where the state government entities are not exempt from sales taxes on sales within their state, the contractor shall add the sales taxes on the billing invoice as a separate entry.

9. MODIFICATION OR WITHDRAWAL OF BIDS AND PROPOSALS: Bids and proposals may be modified or withdrawn prior to the time set for receipt of bids or proposals. After the time set for receipt of bids or proposals, no proposal may be modified or withdrawn.

10. PATENTS, COPYRIGHTS, ETC: The Contractor shall release, defend, indemnify, and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from liability of any kind or nature, including the Contractor's use of any copyrighted or uncopyrighted composition, process, patented or unpatented invention, article or appliance furnished or used in performance of this contract.

11. AWARD: Multiple contracts may be awarded as a result of this solicitation. Awards in requests for proposals (competitive sealed proposals) shall be made to the responsible offeror(s) whose proposals are determined to be the most advantageous to the Participating States, taking into consideration price and the other evaluation factors set forth in the solicitation. Unless otherwise stated in the solicitation, an award in an solicitation denominated as an invitation to bid will be made to the lowest responsive and responsible bidder(s) meeting specifications and all bid terms and conditions. The Participating States reserve the right to award items separately or by grouping items, or by total lot.

12. NON-COLLUSION: By signing the proposal the offeror certifies that the proposal submitted, has been arrived at independently and has been submitted without collusion with, and without any agreement, understanding or planned common course of action with, any other vendor of materials, supplies, equipment or services described in the solicitation, designed to limit independent bidding or competition.

13. TERMINATION: Unless otherwise stated in the solicitation, any contract entered into as a result of this solicitation may be terminated by either party upon 60-days notice, in writing, prior to the effective date of the termination. Further, any Participating State may terminate its participation upon 30-days written notice, unless otherwise limited or stated in the special terms and conditions of the solicitation. Any termination under this provision shall not effect the rights and obligations attending orders outstanding at the time of cancellation, including any right of any Purchasing Entity to indemnification by the Contractor, rights of payment for goods/services delivered and accepted, and rights attending any warranty or default in performance in association with any order.”

14. DEFAULT AND REMEDIES:

A. Any of the following shall constitute cause to declare the contract or any order under this contract in default:

- (1) Nonperformance of contractual requirements; or
- (2) A material breach of any term or condition of this contract.

B. A written notice of default, and an opportunity to cure, shall be issued by the party claiming default, whether the Lead State (in the case of breach of the entire agreement), a Participating State (in the case of a breach of the Participating Addendum), the Purchasing Entity (with respect to any order), or the Contractor. Time allowed for cure shall not diminish or eliminate any liability for liquidated or other damages.

C. If the default remains after the opportunity for cure, the non-defaulting party may:

- (1) Exercise any remedy provided by law or equity;
- (2) Terminate the contract or any portion thereof, including any orders issued against the contract;
- (3) Impose liquidated damages, as specified in the solicitation or contract;
- (4) In the case of default by the contractor, and to the extent permitted by the law of the Participating State or Purchasing Entity, suspend contractor from receiving future solicitations.

15. LAWS AND REGULATIONS: Any and all supplies, services and equipment offered and furnished shall comply fully with all applicable Federal and State laws and regulations.

16. CONFLICT OF TERMS: In the event of any conflict between these standard terms and conditions and any special terms and conditions in the solicitation, the special terms and conditions shall govern.

17. REPORTS: The contractor shall submit quarterly reports to the Lead State contract administrator, and upon request to any Participating State, showing the quantities and dollar volume of purchases by each Purchasing Entity.

18. HOLD HARMLESS: The contractor shall release, defend, indemnify and hold harmless WSCA, the Participating States, and the Purchasing Entities, as well as the officers, agents and employees of WSCA, the Participating States and the Purchasing Entities, from and against any damage, cost or liability, including reasonable attorneys fees for any or all injuries to persons, property or claims for money damages arising from acts or omissions of the contractor, its employees or subcontractors or volunteers.

19. ORDER NUMBERS: Contract order and purchase order numbers shall be clearly shown on all acknowledgments, shipping labels, packing slips, invoices, and on all correspondence.

20. GOVERNING LAW AND VENUE: This procurement shall be governed and the resulting price agreement construed in accordance with the laws of the Lead State. The construction and effect of any Participating Addendum or order against the price agreement shall be governed by and construed in accordance with the laws of the Purchasing Entity's State. Venue for any claim, dispute or action concerning the construction and effect of the price agreement shall be in the Lead State. Venue for any claim, dispute or action concerning an order placed against the price agreement or the effect of a Participating Addendum or shall be in the Purchasing Entity's State.

21. DELIVERY: The prices offered shall be the delivered price to any WSCA state agency or political subdivision. All deliveries shall be F.O.B. destination with all transportation and handling charges paid by the contractor. Responsibility and liability for loss or damage shall remain the Contractor until final inspection and acceptance when responsibility shall pass to the Purchasing Entity except as to latent defects, fraud and Contractor's warranty obligations. The minimum shipment amount will be found in the special terms and conditions. Any order for less than the specified amount is to be shipped with the freight prepaid and added as a separate item on the invoice. Any portion of an order to be shipped without transportation charges that is back ordered shall be shipped without charge.

22. WARRANTY: As used herein "Purchasing entity" refers to any WSCA state agency or political subdivision. The CONTRACTOR agrees to warrant and assume responsibility for all products (including hardware, firmware, and/or software products) that it licenses, contracts, or sells to the PURCHASING ENTITY under this contract for a period of one year, unless otherwise specified and mutually agreed upon elsewhere in this contract. The CONTRACTOR (seller) acknowledges that all warranties granted to the buyer by the Uniform Commercial Code of the PURCHASING ENTITY apply to this contract. Product liability disclaimers and/or warranty disclaimers from the seller are not applicable to this contract unless otherwise specified and mutually agreed upon elsewhere in this contract. In general, the CONTRACTOR warrants that: (1) the product will do what the salesperson said it would do, (2) the product will live up to all specific claims that the manufacturer makes in their advertisements, (3) the product will be suitable for the ordinary purposes for which such product is used,

(4) the product will be suitable for any special purposes that the PURCHASING ENTITY has relied on the CONTRACTOR'S skill or judgment to consider when it advised the PURCHASING ENTITY about the product, (5) the product has been properly designed and manufactured, and (6) the product is free of significant defects or unusual problems about which the PURCHASING ENTITY has not been warned. Remedies available to the PURCHASING ENTITY include the following: the CONTRACTOR will repair or replace (at no charge to the purchasing entity) the product whose nonconformance is discovered and made known to the CONTRACTOR in writing. If the repaired and/or replaced product proves to be inadequate, or fails of its essential purpose, the CONTRACTOR will refund the full amount of any payments that have been made. Nothing in this warranty will be construed to limit any rights or remedies the PURCHASING ENTITY may otherwise have under this contract with respect to defects.

23. AMENDMENTS: The terms of this contract shall not be waived, altered, modified, supplemented or amended in any manner whatsoever without prior written approval of the Contract Administrator of the Lead State.

24. ASSIGNMENT/SUBCONTRACT: Contractor shall not assign, sell, transfer, subcontract or sublet rights, or delegate responsibilities under this contract, in whole or in part, without the prior written approval of the Contract Administrator of the Lead State.

25. NONDISCRIMINATION: The offeror agrees to abide by the provisions of Title VI and Title VII of the Civil Rights Act of 1964 (42 USC 2000e), which prohibit discrimination against any employee or applicant for employment, or any applicant or recipient of services, on the basis of race, religion, color, or national origin; and further agrees to abide by Executive Order No. 11246, as amended, which prohibits discrimination on basis of sex; 45 CFR 90 which prohibits discrimination on the basis of age, and Section 504 of the Rehabilitation Act of 1973, or the Americans with Disabilities Act of 1990 which prohibits discrimination on the basis of disabilities. The offeror further agrees to furnish information and reports to requesting State(s), upon request, for the purpose of determining compliance with these statutes. Offeror agrees to comply with each individual state's certification requirements, if any, as stated in the special terms and conditions. This contract may be canceled if the offeror fails to comply with the provisions of these laws and regulations. The offeror must include this provision in every subcontract relating to purchases by the States to insure that subcontractors and vendors are bound by this provision.

26. SEVERABILITY: If any provision of this contract is declared by a court to be illegal or in conflict with any law, the validity of the remaining terms and provisions shall not be affected; and the rights and obligations of the parties shall be construed and enforced as if the contract did not contain the particular provision held to be invalid.

27. INSPECTIONS: Goods furnished under this contract shall be subject to inspection and test by the Purchasing Entity at times and places determined by the Purchasing Entity. If the Purchasing Entity finds goods furnished to be incomplete or in compliance with proposal specifications, the Purchasing Entity may reject the goods and require Contractor to either correct them without charge or deliver them at a reduced price, which is equitable under the circumstances. If Contractor is unable or refuses to correct such goods within a time deemed reasonable by the Purchasing Entity, the Purchasing Entity may cancel the order in whole or in part. Nothing in this paragraph shall adversely affect the Purchasing Entity's rights including the rights and remedies under the Uniform Commercial Code.

28. PAYMENT: Payment for completion of an contract is normally made within 30 days following the date the entire order is delivered or the date a correct invoice is received, whichever is later. After 45 days the Contractor may assess overdue account charges up to a maximum rate of one percent per month on the outstanding balance. Payments will be remitted by mail. Payments may be made via a Purchasing Entity's "Purchasing Card".

29. FORCE MAJEURE: Neither party to this contract shall be held responsible for delay or default caused by fire, riot, acts of God and/or war which is beyond that party's reasonable control. The Lead State may terminate this contract after determining such delay or default will reasonably prevent successful performance of the contract.

30. HAZARDOUS CHEMICAL INFORMATION: The Contractor will provide one set of the appropriate material safety data sheet(s) and container label(s) upon delivery of a hazardous material to the Purchasing Entity agency. All safety data sheets and labels will be in accordance with each participating state's requirements.

31. FIRM PRICE: Unless otherwise stated in the special terms and conditions, for the purpose of award, offers made in accordance with this solicitation must be good and firm for a period of ninety (90) days from the date of receipt of bids or proposals. Prices must remain firm for the full term of the contract.

32. EXTENSION OF PRICES: In the case of error in the extension of prices in the proposal, the unit prices will govern.

33. PROPOSAL PREPARATION COSTS: WSCA is not liable for any costs incurred by the offeror in preparation of the bid or proposal.

34. CERTIFICATION REGARDING CONFLICT OF INTEREST: Contractor certifies that it has not offered or given any gift or compensation prohibited by the state laws of any Participating State to any officer or employee of WSCA or Participating States to secure favorable treatment with respect to being awarded this contract.

35. INDEPENDENT CONTRACTOR: Contractor shall be an independent contractor, and as such shall have no authorization, express or implied to bind the Participating States to any agreements, settlements, liability or understanding whatsoever, and agrees not to perform any acts as agent for WSCA or the states, except as expressly set forth herein.

36. POLITICAL SUBDIVISION PARTICIPATION: Participation under this contract by political subdivisions (i.e., colleges, school districts, counties, cities, etc.,) of the WSCA participating states shall be voluntarily determined by the political subdivision. The contractor agrees to supply the political subdivisions based upon the same terms, conditions and prices.

37. E-RATE COMPLIANCE: Contractor agrees to participate in the Federal Communication Commission's E-rate discount program established pursuant to the Telecommunications Act of 1996, and

in accordance with any State and local government E-rate related requirement(s) of the authorized procuring agency.

38. CERTIFICATION REGARDING DEBARMENT: The Contractor certifies that neither it nor its principals are presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction (contract) by any governmental department or agency. If the CONTRACTOR cannot certify this statement, attach a written explanation for review by WSCA.

39. RECORDS ADMINISTRATION: The contractor will maintain, or supervise the maintenance of all records necessary to properly account for the payments made to the contractor for costs authorized by this contract. These records will be retained by the contractor for at least four years after the contract terminates, or until all audits initiated within the four years have been completed, whichever is later.

40. AUDIT OF RECORDS: The contractor agrees to allow WSCA, State and Federal auditors, and state agency staff access to all the records to this contract, for audit and inspection, and monitoring of services. Such access will be during normal business hours, or by appointment.

41. PRICES AS CEILING: Price agreement prices represent ceiling prices for the supplies and services priced in the price agreement. The vendor shall report to the Lead State any price reduction or discount, or other more favorable terms, offered to any Purchasing Entity, and the awarded vendor agrees to negotiate in good faith to reestablish ceiling prices or other more favorable terms and conditions applicable to future orders.

42. STATE PARTICIPATION/UNIQUE TERMS AND CONDITIONS: Apart from the Lead State conducting the solicitation, the States indicated on Attachment A have signified their intent to enter into a price agreement and, except where Attachment A or the solicitation requires execution of a Participating Addendum, are considered Participating States for purposes of this solicitation and the resulting contract. Attachment A of the Solicitation includes any significant State-specific provisions required by the laws, regulations, or procurement practices of the State(s).

Additional States may be added with the consent of the contractor and the Lead State (on behalf of the WSCA Participating States) through execution of a Participating Addendum.

Revision Date: April 2001